UNIVERSITY OF TORONTO
FACULTY OF LAW

SECURED TRANSACTIONS

2015-2016

Supplementary Materials

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PRIORITY RULES

1. SP1 and D are negotiating a security agreement. On 1 January, SP1 registers a financing statement. The collateral description is inventory. On 1 February, D approaches SP2 for a secured loan SP2 does a register search and discovers SP1's registration. SP2's asks for details pursuant to OPPSA, s.18. SP1's reply states that there is no security agreement between the parties and that negotiations are presently suspended. On 15 February, SP2 enters into a security agreement with D and registers a financing statement. The collateral description is inventory. On 1 March, SP1 and D resume negotiations, resulting in a security agreement covering all D's present and after-acquired inventory. D defaults against SP1 and SP2. Who has priority?

2. SP1 and D are negotiating a security agreement. On 1 January, SP1 registers a financing statement. The collateral description is inventory. SP1 and D conclude a security agreement on 15 January. The security agreement describes the collateral as all present and after-acquired blue widgets. On 1 February, D approaches SP2 for a secured loan, offering to put up all present and after-acquired green widgets as collateral. SP2'ss register search discloses SP1's registration. SP1 informs SP2 that its security agreement covers blue widgets only. On 15 February, SP2 and D enter into a security agreement. The security agreement describes the collateral as present and after-acquired green widgets. SP2 registers a financing statement. The collateral description is inventory. On 1 May, SP1 and D enter into a second security agreement for a new loan, this one covering present and after-acquired green widgets. D defaults. SP1 and SP2 both claim the green widgets. Who has priority?

3. D assigns its accounts to SP1. SP1 registers a financing statement on 1 January. On 1 February, D gives SP2 a security interest in its inventory and SP2 registers a financing statement. On 1 March, D sells an item of inventory to O on 90 day terms. O is a retail customer and the sale is in the ordinary course of D's business. On 1 May, O pays D by cheque and D banks the cheque. There are no other funds in the account. D defaults. SP1 and SP2 both claim the bank deposit. Who has priority?

4. SP1 has a security interest in D's pickup truck. SP1 registers a financing statement on 1 January which, unknown to SP1, contains an invalidating error. On 1 June, SP2 opens negotiations with D for a security interest in the same pickup truck and registers a financing statement. SP2 and D sign a security agreement on 10 June. On 15 June, D defaults against SP1 who repossesses the truck. SP1 and SP2 claim priority. Who wins?

5. On 1 June, SP1 and D enter into a security agreement. The collateral is a widget valued at \$100. The security agreement says that the security interest covers an advance to D of \$60 and any further advances SP1 might make to D. SP1 registers a financing statement and pays D the \$60. On 1 July, SP2 and D enter into a security agreement giving SP2 a security interest in the same widget. SP2 registers a financing statement and makes D a loan of \$30. On 1 August, SP1 makes D a further advance of \$50. On 1 September, D defaults against SP1 and SP2. SP1 claims the widget for its 1 June and 1 August advances. SP2 says that its claim to the widget in relation to SP2's 1 July advance has priority over SP1's claim to the widget in relation to SP1's August advance. Who wins?

6. On 1 January, SP1 takes a security interest in D's pickup truck and registers a financing statement. On 1 February, SP2 takes a security interest in the same pickup truck and registers a financing statement. On 1 November, SP1's security interest becomes unperfected. On 1 December, SP1 reperfects its security interest by registering a new financing statement. On 15 December, D defaults. SP1 and SP2 both claim the truck. Who wins?

Purchase money security interest priority rules

1. D is a widget dealer. On 1 June, SP1 takes a security interest in D's present and after-acquired inventory and accounts. SP1 registers a financing statement. On 1 July, SP2 supplies D with widgets as inventory under a conditional sales agreement. SP2 registers a financing statement. On 1 August, D defaults against SP1 and SP2. Who has priority in relation to the widgets SP2 supplied?

2. D owns a factory. On 1 June, SP1 takes a security interest in D's present and after-acquired machinery. SP1 registers a financing statement. On 1 July, SP2 supplies D with new machinery under a conditional sale agreement. SP2 registers a financing statement. On 1 August, D defaults against SP1 and SP2. Who has priority in relation to the machinery SP2 supplied?

3. D owns a factory. On 1 June, SP1 takes a security interest in all D's present and after-acquired factory machinery. SP1 registers a financing statement on the same date. On 1 July, SP2 lends D a replacement machine for 4 weeks. On 21 July, SP2 and D enter into a conditional sale agreement for the sale of the replacement machine to D. On 30 July, SP2 registers a financing statement. D defaults. SP1 and SP2 both claim the replacement machine. Who has priority?

4. D owns a factory. On 1 June, SP1 takes a security interest in D's present and after-acquired factory machinery. SP1 registers a financing statement. On 1 July, SP2 and D negotiate the sale of a new piece of machinery to D. D agrees to make a 20% down payment on the purchase price and to pay SP2 the balance by installments under a conditional sale agreement. D borrows the amount of the down payment from SP3 and gives SP3 a security interest in the machine. SP3 registers a financing statement on 2 July. SP2 registers a financing statement on 10 July. D defaults. SP1, SP2 and SP3 all claim the machine. Who has priority?

5. D owns a factory. On 1 June, SP1 takes a security interest in D's present and after-acquired factory machinery. SP1 registers a financing statement. On 1 July, S and D negotiate the sale of a new piece of machinery to D. D borrows 60% of the purchase price from SP2 and gives SP2 a security interest in the machine. D borrows 40% of the price from SP3 and gives SP3 a security interest in the machine. SP3 registers a financing statement on 2 July. SP2 registers a financing statement on 10 July. D defaults and SP1, SP2 and SP3 all claim the machine. Who has priority?

6. D owns a factory. On 1 June, SP1 takes a security interest in all D's present and after-acquired factory machinery. SP1 registers a financing statement. On 1 July, S and D negotiate the sale of a new piece of machinery to D. D borrows the purchase price from SP2 and gives SP2 a security interest in the machine. D fraudulently borrows the amount of the purchase price again from SP3 and gives SP3 a security interest in the machine. SP3 registers a financing statement on 2 July. SP2 registers a financing statement on 10 July. D uses the proceeds of SP2's loan to buy the machine from S. He spends the proceeds of SP3's loan on a week of riotous living. D defaults. SP1, SP2 and SP3 all claim the machine. Who has priority?

FIXTURES

1. SP and D sign a security agreement for a security interest in a machine. SP lends D money. D rents factory premises from TL. D fixes the machine to the factory floor. SP defaults on the loan repayments to SPC and on the rent to TL. SP and TL both claim the machine. Who wins?

2. SP and D sign a security agreement for a security interest in a machine. SP lends D money. D owns factory premises. She mortgages the property to TL as security for a loan. Later D fixes the machine to the factory floor. D defaults against both SP and TL. SP and TL both claim the machine. Who has priority?

3. SP and D sign a security agreement for a security interest in a machine. SP lends D money. D rents factory premises from TL. D fixes the machine to the factory floor. Later, TL sells the factory to TL1. D defaults against SP. Can SP claim the machine?

4. SP and D sign a security agreement for a security interest in a machine. SP lends D money. D rents factory premises from TL. D fixes the machine to the factory floor. Later, TL mortgages the factory to TL1 as security for a loan. D defaults against SP. Can SP claim the machine?

5. On 1 August, D mortgages factory premises to TL. There is a machine fixed to the factory floor. TL's mortgage is registered in the Land Registry Office. On 1 October, D gives SP a security interest in the machine. D later defaults against SP. Can SP claim the machine?

6. D owns factory premises. There is a machine fixed to the factory floor. On 1 August, D gives SP a security interest in the machine. On 1 October, D mortgages factory premises to TL. TL's mortgage is registered in the Land Registry Office. D later defaults against SP. Can SP claim the machine?

7. On 1 August, D mortgages factory premises to TL. There is a machine fixed to the factory floor. TL registers its mortgage in the Land Registry Office. It makes an advance to D of $10,000. On 1 September, D gives SP a security interest in the machine. SP loans D $7,000. On 1 October, TL makes D a further advance of $5,000. On 1 November, SP registers a s.54 notice. D defaults against SP and TL. The current value of the machine is $20,000. What are SP and TL's respective claims on the machine?

SECURED TRANSACTIONS- PROCEEDS

1. SP has a perfected security interest in D's racehorse. D owes SP $5,000. D defaults. The current value of the racehorse is $2,700. What are SP's rights?

2. SP has a perfected security interest in D's racehorse. D owes SP $5,000. D sells the horse to T without SP's authority. The then current value of the horse is $2,700. T pays D $1,000. Six months later, SP locates the horse. Now it is worth $2,000. D banked the $1,000 as soon as she received it from T. Miraculously, the money is still in D's account. There are, and were, no other funds in the account. What are SP's rights as secured creditor?

3. D is a horse trader. SP has a perfected security interest in D's assets, including inventory. D sells T a horse in the ordinary course of business. T pays D $1,000. What are SP's rights as a secured creditor?

4. SP has a perfected security interest in D's race horse. There is a fire in D's stables and the horse dies. D's insurer pays D $1,000. D defaults against SP. What are SP's rights as a secured creditor?

5. SP has a perfected security interest in D's race horse. The horse is useless. D sells it to T without SP's authority. T pays D $1,000. T is a pet food manufacturer. T slaughters the horse and puts it into tins of Kittee Kat. Can SP claim the tins of Kittee Kat?

6. SP has a security interest in D's race horse. D sells the race horse to T without SP's authority. T pays D $1,000. D spends the money in a week of riotous living. D defaults against SP. D's only remaining asset is a speed boat. The horse is lamed in a training accident and D has it put down. What rights, if any, does SP have left as a secured creditor?

7. As in Case 6, except that D pays the money into her bank account. There are no other funds in the account. What are SP's rights as a secured creditor?

8. As in Case 6, except that D uses the money to buy a speed boat. The price is $3,000. D makes up the balance of the price out of her savings. What claim, if any, doers SP have to the speed boat?

9. As in Case 7, except that there is $2,000 already in D's account when she pays in the sale proceeds. What claim, if any, does SP have to the account?

10. As in Case 7, except that the day after D deposits the sale proceeds, he makes another deposit of $500. The $500 is D's own money. The day after that, D withdraws $400. What claim, if any, does SP have to the account?

11. As in Case 10, except that there are two further movements in the account. The day after making the $400 withdrawal, D withdraws another $200. The day after that, D deposits $800 of her own money. What claim, if any, does SP have to the account?

12. As in Case 7, except that when D pays the sale proceeds into his account, the account is $3,000 overdrawn. What are SP's rights, if any, as a secured creditor?

CONFLICT OF LAWS PROBLEMS

1. D is a retailer. D's head office is in Toronto. D has 4 stores in Ontario and one in New Brunswick. SP and D enter into a security agreement. The collateral includes the inventory in D's New Brunswick store. SP perfects its security interest by registering a financing statement in Ontario. D becomes bankrupt. D's trustee in bankruptcy disputes SP's claim to the New Brunswick store inventory. Who wins? Assume that, in all relevant respects, New Brunswick law is the same as Ontario law.

2. D runs a small manufacturing business in Alberta. SP has a security interest in D's factory equipment. SP's security interest is perfected by registration in Alberta. D relocates the business to Ontario and on 1 January the factory equipment is moved there along with everything else. On 1 February D sells an item of equipment to T without SP's consent. Sp learns about D's relocation on 12 February. On 15 February SP registers a financing statement in Ontario. SP later finds out about the unauthorized sale and claims the equipment from T. SP's security remains perfected in Alberta. Who wins?

3. As in Case (2), except that SP does not register in Ontario until 15 March.

4. As in Case (3), except that D's sale to T takes place on 30 March.

5. D lives in Alberta. SP has a security interest in D's household goods, including a television. SP's security interest is perfected by registration in Alberta. D moves to Ontario on 1 March, bringing the television with her. On 15 March, D sells the television to T who acquires it for personal use. SP finds out about D's move on 25 March. On 30 March, SP registers a financing statement in Ontario covering the television. On 1 May, SP learns about the sale and claims the television from T. Who wins?

6. As in Case (5), except that SP's security interest was unperfected in Alberta.

7. As in case (5). except that SP's security interest was unperfected in Alberta and D does not sell the television to T until 1 April.

8. D owns a newspaper business in Ontario. On 1 March, D buys a printing press from S in Saskatchewan. D borrows the money from SP1 to pay for the press. SP1 takes a security interest in the press and registers a financing statement in Saskatchewan. On 15 March, S transports the press to D's plant in Ontario. On 1 April, D gives SP2 a security interest in all D's present and after-acquired personal property. SP2 registers a financing statement in Ontario. On 15 April, SP1 registers a financing statement in Ontario. D defaults against SP1 and SP2. They both claim the press. Who wins?

9. D owns a national trucking business. D's head office is in Ontario. SP is a British Columbia truck dealer. SP supplies D with a truck on conditional sale terms. SP registers a financing statement in British Columbia. D becomes bankrupt. SP and D's trustee in bankruptcy both claim the truck. Who wins?

10. D lives in Ontario. SP and D enter into a security agreement covering D's car. The security agreement is signed in Ontario. Later D moves to British Columbia taking the car with her. D defaults and SP repossesses and sells the car. SP sues D in Ontario for the deficiency. D denies liability on the ground that the British Columbia seize or sue provision applies. Who wins?

BANK ACT SECURITY INTERESTS

1. Bank A registers a notice of intention on May 1. Bank B registers a notice of intention on May 15 and obtains a security agreement from the debtor on May 18. On May 21, Bank A obtains a security agreement from the debtor granting a security interest in the same collateral. The collateral is Debtor's agricultural equipment, including a tractor which Debtor has owned for some time. Debtor defaults and Bank A and Bank B both claim the tractor.

2. Credit Union takes a security interest in Debtor's tractor on May 18, but does not register a financing statement under the PPSA. Bank obtains a Bank Act security interest from Debtor on May 21, having previously registered a notice of intention. Who has priority?

3. Bank takes a s.427 Bank Act security interest in debtor's agricultural equipment having previously registered a notice of intention. Later, Seller sells Debtor a tractor under a conditional sale agreement. Debtor defaults against Bank and Seller. Who has priority for the tractor?

4. Credit Union has an unperfected security interest in all Debtor's present and after-acquired property. The date of the security agreement is 1 April. Bank has a Bank Act security interest in Debtor's agricultural equipment, *viz.*, present and after-acquired agricultural equipment. The date of the Bank Act security agreement is 1 August. On 1 December, Debtor acquires a new tractor. Debtor defaults and Credit Union and Bank both claim the tractor.

5. Bank takes a Bank Act security interest in Debtor's equipment, but it neglects to register a notice of intention. Later, Debtor gives Credit Union a security interest in the same equipment. Credit Union registers a PPSA financing statement but the registration is invalid. Debtor defaults and Bank takes possession of the equipment.

6. Bank takes a s.427 Bank Act security interest in debtor's agricultural equipment having previously registered a notice of intention. At the same time, Debtor signs a second security agreement with Bank covering the same collateral. Bank registers a financing statement under the PPSA. Later, Seller sells Debtor a tractor under a conditional sale agreement. Debtor defaults against Bank and Seller. Credit Union registers a financing statement but the registration is invalid due to an error in the financing statement. Assume British Columbia law governs at the provincial level.